

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs July 18, 2001

STATE OF TENNESSEE v. STEVEN L. CHRISMAN

Appeal from the Circuit Court for Montgomery County
No. 40737 John H. Gasaway, III, Judge

No. M2000-02812-CCA-R3-CD - Filed September 20, 2001

The defendant, Steven L. Chrisman, was convicted of three counts of aggravated burglary, Class C felonies. See Tenn. Code Ann. § 39-14-403. The trial court imposed concurrent sentences of eight years on each count; required jail confinement of 90 days; and ordered placement in a Community Corrections program for the remainder of the sentence. When the defendant failed to report to his Community Corrections officer, failed to make restitution, and failed to pay costs, the trial court ordered service of the remainder of the sentence in the Department of Correction. In this appeal of right, the defendant contends that the trial court erred by the revocation of his Community Corrections sentence. The judgment is affirmed.

Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed

GARY R. WADE, P.J., delivered the opinion of the court, in which JOSEPH M. TIPTON and JOHN EVERETT WILLIAMS, JJ., joined.

Gregory D. Smith (on appeal) and Roger Nell, Public Defender, Clarksville, Tennessee (on appeal and at trial), for the appellant, Steven L. Chrisman.

Paul G. Summers, Attorney General & Reporter; Elizabeth T. Ryan, Assistant Attorney General; and Helen Young, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On September 3, 1999, the defendant pled guilty to three counts of aggravated burglary and received an effective total sentence of eight years. After a term in jail, he was placed in a Community Corrections program. Less than four months later, a violation warrant was issued wherein it was alleged that the defendant had failed to comply with the terms and conditions of his Community Corrections sentence.

At the ensuing hearing, Capri Griffy, a probation officer with the Community Corrections program, testified that the defendant had reported to her office only three times since his placement in the program. When she attempted to contact the defendant at his listed place of employment, she learned that he no longer worked there. When she attempted to reach the defendant at his listed residence, she was informed that he no longer resided there.

The defendant claimed that he understood that the trial court had allowed service of his sentence to be transferred to Sumner County, where he lived and worked. He testified that he had lost his job and that because his license was suspended, he had been unable to travel to Montgomery County to report to his probation officer as required. The defendant claimed, however, that he had reported to the Community Corrections office in Montgomery County on at least eight or nine prior occasions.

Near the conclusion of the hearing, the trial court ordered a drug screen for the defendant. He tested positive for marijuana. In addition to the failure to report and the drug violation, the trial court determined that the defendant had failed to pay restitution in the amount of \$100 per month and that he had failed to surrender to authorities prior to serving his 90-day jail sentence. The trial court revoked the alternative sentence and ordered the defendant to serve the remainder of the term in the Department of Correction.

The purpose of the Community Corrections Act of 1985 was to provide an alternative means of punishment for "selected, nonviolent felony offenders in front-end community based alternatives to incarceration." Tenn. Code Ann. § 40-36-103. The Community Corrections sentence provides a desired degree of flexibility that may be both beneficial to the defendant and serve legitimate societal aims. State v. Griffith, 787 S.W.2d 340, 342 (Tenn. 1990). That a defendant meets the minimum requirements of the Community Corrections Act of 1985, however, does not mean that he or she is entitled to be sentenced under the Act as a matter of law or right. See State v. Taylor, 744 S.W.2d 919 (Tenn. Crim. App. 1987). The following offenders are eligible for Community Corrections:

- (1) Persons who, without this option, would be incarcerated in a correctional institution;
- (2) Persons who are convicted of property-related, or drug/alcohol-related felony offenses or other felony offenses not involving crimes against the person as provided in title 39, chapter 13, parts 1-5;
- (3) Persons who are convicted of nonviolent felony offenses;
- (4) Persons who are convicted of felony offenses in which the use or possession of a weapon was not involved;
- (5) Persons who do not demonstrate a present or past pattern of behavior indicating violence;
- (6) Persons who do not demonstrate a pattern of committing violent offenses; and

Persons who are sentenced to incarceration or on escape at the time of consideration will not be eligible.

Tenn. Code Ann. § 40-36-106(a).

Once a defendant violates the terms of his Community Corrections program, the trial court may revoke the sentence and impose a new one:

The court shall also possess the power to revoke the sentence imposed at any time due to the conduct of the defendant or the termination or modification of the program to which the defendant has been sentenced, and the court may resentence the defendant to any appropriate sentencing alternative, including incarceration, for any period of time up to the maximum sentence provided for the offense committed, less any time actually served in any community-based alternative to incarceration.

Tenn. Code Ann. § 40-36-106(e)(4).

The authority to revoke a Community Corrections sentence is based upon the conduct of the defendant while under supervision. Tenn. Code Ann. § 40-36-106(e)(3). A trial judge's decision to revoke a defendant's release on Community Corrections should not be disturbed unless there is an abuse of discretion. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). In order to find an abuse of discretion, it must appear that the record contains "no substantial evidence to support the conclusion of the trial judge that a violation of the conditions . . . occurred." Id.

The same principles applicable to a probation revocation are relevant to the revocation of Community Corrections. Id. at 83. The trial judge is not required to find that a violation of the terms of probation has occurred beyond a reasonable doubt. Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). Rather, the existence of a violation of probation need only be supported by a preponderance of the evidence. Tenn. Code Ann. § 40-35-311(e).

The record here clearly demonstrates that the defendant violated the conditions of his Community Corrections sentence by failing to report to the Community Corrections office as directed, by using illegal drugs, by failing to make restitution payments, and by failing to report timely for periodic confinement. The record suggests that he has had prior offenses, has had opportunities to rehabilitate, and has nevertheless continued to violate the law. In our view, the trial court did not abuse its discretion by revoking the defendant's Community Corrections sentence.

Accordingly, the judgment is affirmed.

GARY R. WADE, PRESIDING JUDGE